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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590

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EXAMINER

GORR, RACHEL F

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 08/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,108

Applicant(s)

ZOFCHAK ET AL.

Examiner

Rachel F. Gorr

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28,30-36 and 38-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14,15,17-20,22-24,26-28,30-33,35,36,48,51,52 and 54-57 is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7-10,13,38-47,49,50 and 58 is/are rejected.
- 7) ☒ Claim(s) 2,6,11,12,16,21,25,34 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. Claims 2, 4, 5, 10, 16, 21, 25 and 53 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claims 4, 5, 16 and their further dependent claims 10, 21, 25 and 53, show fatty acids having less than C10-C25, as specified in their preceding claims. The structure of claim 2 shows R2 comprising C1-C24, whereas, claim one specifies C2-C25; and R3 is C2-C22 vs. C4-C24 of claim one. These claims are broader in scope than their preceding claims.

2. Claim 34 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 33. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

3. Claims 38-47 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 58 is confusing because R4 and R5 aren't defined.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-5, 7-10, 13, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werner in view of Tseng or McGovern.

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6. Werner discloses a composition made by reacting a trialkanolamine with oleic acid (see Release Agent II – col. 13). He then reacts this with diisocyanate (col. 3, lines 11-30). In claim 4, he discloses ricinoleic acid, and in claim 11, he discloses triethanolamine. In col. 3, line 22, he discloses isophorone diisocyanate. In col. 11, he discloses surfactants, preservatives and coloring agents (lines 24-27). He differs from the claims by not specifying using his polyurethanes as personal care products.

7. McGovern discloses that similar polyurethane cellular material can be used as personal care items (col. 1, line 21).

8. Tseng discloses that similar cellular polyurethanes can be used as personal care items (col. 5, line 24).

9. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the cellular polyurethane of Werner in personal care items as taught by Tseng or McGovern in order to expand the market for Werner's formulation.

10. Claims 6, 11 and 12 are objected to for depending on rejected claims.

11. Applicant's arguments filed 7-15-03 have been fully considered but they are not persuasive. The applicants argue that Werner doesn't disclose personal care items. This argument is addressed in the above rejection.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel F. Gorr whose telephone number is 703-308-3608. The examiner can normally be reached on Mon., Tues., Thurs., Fri., from 7:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

R.G.
August 11, 2003


RACHEL GORR
PRIMARY EXAMINER